

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE DISTRICT OF COLUMBIA, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States and in his individual
capacity,

Defendant.

No. 8:17-cv-1596-PJM

MOTION TO STAY PENDING APPEAL
ON BEHALF OF DEFENDANT IN HIS INDIVIDUAL CAPACITY

INTRODUCTION

As the Court is aware, the Plaintiffs amended their complaint to name the President in his individual capacity on March 12, 2018. (Doc. 95). The President filed a motion to dismiss on May 1, 2018, and argued, among other things, that he is entitled to absolute immunity in his individual capacity. (Doc. 112 at 24-27). The Court granted the parties' request to expedite briefing on this motion (Doc. 111), which was completed on May 25, 2018. (Doc. 117) (opposition brief); (Doc. 118) (reply brief). The Court denied the motion to dismiss the official-capacity claims on July 25, 2018. (Doc. 123). But it did not rule on the motion to dismiss the individual-capacity claims, stating only that it would "address the individual capacity claims and the arguments to dismiss them in a separate Opinion." *Id.* at 1 n.2; *see also id.* at 51.

On August 15, 2018, the parties filed a Status Report in which Defendants asked the Court to resolve the motion "at its earliest possible convenience given that, if the motion is denied, having the official and individual claims on different tracks may complicate discovery and ultimately lead to an inefficient allocation of party and judicial resources." (Doc. 125 at 5). On December 3, with fact discovery about to commence, the President again asked for a status conference for his motion to dismiss and outlined how the President's immunity has already been impaired by his participation in pretrial proceedings. (Doc. 143). Later that day, the Court entered an order opening discovery. (Doc. 145). In response to that order, Plaintiffs propounded almost forty subpoenas to third parties, including to The Trump Organization. Among other things, those subpoenas requested "[d]ocuments sufficient to show Donald J. Trump's or Trump Trust's current, historic, and future Financial Interest in the Trump International Hotel Washington, D.C." and "[d]ocuments sufficient to identify all Businesses doing business in the Washington D.C. metropolitan area in which Donald J. Trump or Trump Trust has a Financial Interest." Ex. A. at 7-8. Objections to those subpoenas are due as early as next week, and the subpoenas demand production of documents by the first week of January, 2019.

To date, the Court has neither ruled on the President’s pending motion to dismiss nor set a conference to discuss its status. The Court’s “refusal to consider the [immunity] question” has “subjected [the President] to further pretrial procedures, and so effectively denied him ... immunity.” *Jenkins v. Medford*, 119 F.3d 1156, 1159 (4th Cir. 1997) (en banc). The Fourth Circuit treats such refusals the same as a decision denying a motion to dismiss on immunity grounds and the President has the right to an immediate appeal from that failure to render a decision. *Id.*; see also *Nero v. Mosby*, 890 F.3d 106, 125 (4th Cir. 2018) (“[W]e have held that a district court’s refusal to rule on an immunity-from-suit defense decided the immunity question for purposes of the collateral order doctrine.”); *Everson v. Leis*, 556 F.3d 484, 493 (6th Cir. 2009) (holding that a “district court’s refusal to rule [on immunity] can be appealed immediately to this court”); *Smith v. Reagan*, 841 F.2d 28, 31 (2d Cir. 1988) (“By holding the decision [on immunity] in abeyance pending the completion of all discovery in the case, the district court effectively denie[s] that right”).

The President today filed a notice of appeal and requests a stay of proceedings pending that appeal, as well as an order shortening the time to respond to this motion. Counsel for the President in his official capacity consents to the relief requested in this motion. Plaintiffs oppose.

ARGUMENT

I. This Court Must Stay Discovery Pending The Appeal

The Supreme Court has explained that until a “threshold immunity question is resolved, discovery should not be allowed.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); see also *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (“[I]f the defendant does plead the immunity defense, the district court should resolve that threshold question before permitting discovery.”). The reason for this rule is well-known. The “basic thrust” of immunity is “to free officials from the concerns of litigation, including ‘avoidance of disruptive discovery.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 685 (2009). It is “an entitlement not to stand trial or face the other burdens of litigation.” *Mitchell v. Forsyth*, 472 U.S. 511,

526 (1985). “The entitlement is an *immunity from suit* rather than a mere defense to liability; and ... it is effectively lost if a case is erroneously permitted to go to trial.” *Id.*

This principle means that defendants have a right to immediately appeal an adverse immunity decision. *Mitchell*, 472 U.S. at 526-27. That right would be meaningless, however, if a district court could force defendants to participate in proceedings while the appeal was pending. Indeed, “[t]he interruption of the trial proceedings is the central reason and justification for authorizing such an interlocutory appeal in the first place.” *Stewart v. Donges*, 915 F.2d 572, 576 (10th Cir. 1990). And “[i]t is no answer to these concerns to say that discovery for [the President] can be deferred while pretrial proceedings continue for” third parties. *Iqbal*, 556 U.S. at 685. Because “when discovery as to the other parties proceeds, it would prove necessary for [the President] and [his] counsel to participate in the process to ensure the case does not develop in a misleading or slanted way that causes prejudice to [his] position.” *Id.* So even if the President is not himself directly “subject to discovery orders, then, [he] would not be free from the burdens of discovery.” *Id.* at 686.

It thus does not matter that the parties agreed not to propound discovery directly on the President in his individual capacity until his motion to dismiss was decided. (Doc. 132 n.1). Given the broad scope of the discovery served by Plaintiffs, it undoubtedly will “require the substantial diversion that is attendant to participating in litigation and making informed decisions as to how it should proceed.” *Iqbal*, 556 U.S. at 685. Counsel for the President in his individual capacity will have to review, analyze, and advise their client on the scope of the subpoenas, any objections to them, any subsequent motion practice, and the material produced in response. Even more participation will be necessary if and when the parties take depositions or proffer expert witness reports. Any further progress of this litigation is certain to “exact[] heavy costs in terms of efficiency and expenditure of valuable time and resources that might otherwise be directed to the proper execution of the work of the Government.” *Id.*

For these reasons, “no trial or other proceedings toward trial should be conducted while the interlocutory appeal is pending, and discovery is properly stayed,” *McFadyen v. Duke Univ.*, No. 07-cv-953, 2011 WL 13134315, at *2 (M.D.N.C. June 9, 2011), as defendants have an “automatic entitlement to a stay of proceedings pending resolution of the interlocutory appeal,” *Speers v. Cty. of Berrien*, No. 04-cv-32, 2005 WL 1907525, at *3 (W.D. Mich. Aug. 10, 2005); *see also Goshtasby v. Bd. of Trustees of Univ. of Illinois*, 123 F.3d 427, 428 (7th Cir. 1997) (“[W]hen a public official takes an interlocutory appeal to assert a colorable claim to absolute or qualified immunity from damages, the district court must stay proceedings.”); *Hegarty v. Somerset Cty.*, 25 F.3d 17, 18 (1st Cir. 1994) (“[T]he stay of discovery, of necessity, ordinarily must carry over through the *appellate court’s* resolution of [the immunity] question.”); *English v. Dyke*, 23 F.3d 1086, 1089 (6th Cir. 1994) (“While the [immunity] issue is before the trial court or the case is on appeal, the trial court should stay discovery.”). The Court therefore should stay proceedings pending the appeal.¹

II. Expedited Briefing On This Motion Is Necessary To Preserve The President’s Immunity Rights

The President requests that the Court order an expedited response to this motion. Under the Court’s rules, Plaintiffs have 14 days to respond to the motion. *See* L.R. 105(2)(a). That is too long for the President to obtain relief before his immunity rights are further eroded because the return date on the Plaintiffs’ subpoenas are as early as January 2, 2019. To give the Court sufficient time to issue a decision before that date, the President requests that the Court order Plaintiffs to respond to this motion within five days; the President will file his reply within two days afterward.

¹ The Court should independently grant a stay under its discretionary authority to do so. The President thus incorporates the arguments previously made by the President in his official capacity in support of a stay pending appeal on 1292(b) certification. (Doc. 127, at 25-27; Doc. 134, at 15-17). In addition to the arguments raised there—when the President’s immunity was not directly at issue—the competing interest of preserving the President’s immunity supports a stay.

CONCLUSION

For the foregoing reasons, the Court should stay proceedings pending the President's appeal.

Respectfully submitted,

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December 14, 2018

Attorneys for Defendant in his individual capacity

CERTIFICATE OF SERVICE

I certify that on December 14, 2018, I electronically filed this document with the Clerk of Court for the U.S. District Court for the District of Maryland using the CM/ECF system, which will send notification of the filing to all counsel.

/s/ William S. Consovoy
William S. Consovoy

Attorney for Defendant in his individual capacity

Exhibit A

UNITED STATES DISTRICT COURT

for the
District of Maryland

The District of Columbia, et al

Plaintiff

v.

Donald J. Trump

Defendant

Civil Action No. 8:17-cv-01596-PJM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR
TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: The Trump Organization Inc. c/o National Registered Agents, Inc.;
875 Avenue of the Americas, Suite 501, New York, New York 10001

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A

Place: Cohen Milstein Sellers & Toll PLLC
88 Pine Street, 14th Floor
New York, NY 10005

Date and Time:
January 3, 2019, 9:00 AM

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/4/2018

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

The District of Columbia and the State of Maryland, who issues or requests this subpoena, are:

Stephanie Litos; 441 4th St. NW, Ste. 630 S, Washington, DC 20001; stephanie.litos@dc.gov; 202-724-6650

Leah Tulin; 200 St. Paul Place, 20th Floor, Baltimore, MD 21202; ltulin@oag.state.md.us; 410-576-6962

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 8:17-cv-01596-PJM

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
GREENBELT DIVISION**

THE DISTRICT OF COLUMBIA AND THE
STATE OF MARYLAND,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States of America,

Defendant.

Case No. 8:17-cv-01596

ATTACHMENT A TO SUBPOENA TO THE TRUMP ORGANIZATION INC.

DEFINITIONS

1. “Agreement” means any oral or written contract, arrangement, or understanding, whether formal or informal, between two or more Persons, together with modifications or amendments thereto.
2. “All” shall be construed as all, each, any, and every.
3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all information that might otherwise be construed to be outside their scope.
4. “Business(es)” means any partnership, joint venture, unincorporated association, limited liability company, corporation, firm, estate, or trust.

5. “Communications” is used in the broadest sense possible and means every manner of disclosure, transfer, or exchange of information to another Person or Persons, whether orally, written, electronically (including e-mail, voicemail, voicemail which is delivered by email, text messages, tweet, direct messages, instant messaging, other social media communication, and/or any other form of electronic correspondence or exchange), by Document, mail, personal delivery, face-to-face meeting, or otherwise. All such communications in writing shall include, without limitation, printed, typed, handwritten, or other Documents.

6. “Concerning” means relating to, referring to, describing, evidencing, or constituting, in whole or in part, directly or indirectly, the stated subject matter.

7. “Document(s)” means written, recorded, and/or graphic material of every kind and Electronically Stored Information—including without limitation drawings, graphs, charts, photographs, sound recordings, video recordings, images, and/or other data and data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by You into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term. Document(s) includes the labels or metadata associated with each original or copy.

8. “Donald J. Trump” refers to Donald J. Trump, the individual.

9. “Electronically Stored Information,” or “ESI” means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise) of any electronically created or stored information, including e-mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a sent or deleted-items folder), word-processing files, spreadsheets, databases, unorganized data, Document metadata, presentation

files, video recordings, and sound recordings, regardless of how or where the information is stored, including if the information is on a mobile device.

10. “Emoluments Clauses” means the language in U.S. Const. art. I, § 9, cl. 8 prohibiting any “Person holding any Office of Profit or Trust” from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State,” absent “the Consent of the Congress” and the language in U.S. Const. art. II, § 1, cl. 7 prohibiting the President from “receiv[ing] within that Period any other Emolument from the United States, or any of them.”

11. “Emoluments Litigation” refers to *Citizens for Responsibility & Ethics in Washington v. Trump*, 17-cv-458 (S.D.N.Y.); *District of Columbia & Maryland v. Trump*, 8:17-cv-01596 (D. Md.); *Blumenthal v. Trump*, 17-cv-1154 (D.D.C.), and any other existing or future lawsuits alleging that President Donald J. Trump has violated the Emoluments Clauses.

12. “Financial Interest” means (i) direct or indirect ownership of an interest and/or (ii) interest in a share of revenue.

13. “Foreign or Domestic Government(s)” means all governments outside of the United States and any federal, state, or local government in the United States, including each government’s present and former agencies, branches, units, divisions, subdivisions, districts, public corporations, employees, elected and appointed officials, Ambassadors, diplomats, emissaries, authorities, agents, assignees, and instrumentalities, and including government-controlled corporations, government-controlled Business entities, entities in which the government has a Financial Interest, and each Person acting or purporting to act on the government’s behalf.

14. “Including” shall be construed as “including but not limited to.”

15. “Payment” includes both direct and indirect payments, including those payments that are passed through another entity including a management company or any other entity from which You receive payments or to which You make payments. Payments also include payments received as a shareholder in a Subchapter S Corporation (also known as a “pass-through” entity) or any other pass-through entity.

16. “Person(s)” includes without limitation any natural person, entity, individual or group of individuals, partnership, joint venture, unincorporated association, corporation, firm, or estate.

17. “Trump Trust” refers to any trust or other instrument to which Donald J. Trump has been a beneficiary or potential beneficiary at any time since January 20, 2017.

18. “U.S. Treasury” includes the United States Department of the Treasury but does not include the Internal Revenue Service.

19. “Washington D.C. metropolitan area” means the counties and cities designated as “central” in the Washington-Arlington-Alexandria DC-VA-MD-WV Metropolitan Statistical Area as defined by the Office of Management and Budget Bulletin No. 15-01, which includes the District of Columbia; Montgomery County, MD; Prince George's County, MD; Arlington County, VA; Fairfax County, VA; Fauquier County, VA; Loudoun County, VA; Prince William County, VA; Stafford County, VA; Alexandria city, VA; Fairfax city, VA; Falls Church city, VA; Manassas city, VA; and Manassas Park city, VA.

20. “You” and “Your” mean the recipient of these requests and shall include all entities in which You have a Financial Interest; your direct and indirect parents, predecessors-in-interest, affiliates, subsidiaries, divisions, predecessors, successors, and assignees; the present and former officers, directors, employees, attorneys, agents, and representatives of any of the above; and each

Person acting or purporting to act on your behalf or on the behalf of any of the aforementioned entities.

GENERAL INSTRUCTIONS

1. In responding to these Requests, You are to furnish all available information, including information in the possession, custody, or control of Your agents and all Persons acting on Your behalf. This includes Documents presently in the possession, custody, or control of Your attorney(s) or their investigators and Documents presently in the possession, custody, or control of any third party or parties to whom You have surrendered possession, custody, or control; or who are acting on Your behalf; or who have otherwise obtained possession, custody, or control; or who, upon Your request, would surrender possession, custody, or control to You.

2. If any responsive Document was, but no longer is, in Your possession, custody, or control, produce a description of each such Document. The description shall include the following:

- (a) the name of each author, sender, creator, and initiator of such Document;
- (b) the name of each recipient, addressee, or party for whom such Document was intended;
- (c) the date the Document was created;
- (d) the date(s) the Document was in use;
- (e) a detailed description of the content of the Document;
- (f) the reason it is no longer in Your possession, custody, or control; and
- (g) the Document's current location.
- (h) If the Document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the Document was destroyed or otherwise disposed of, and the date and manner of the disposal.

3. If You claim the attorney-client privilege, or any other privilege or protection (including any deliberative process, work product, joint defense, or common interest protections) for any Document, You shall provide the following information with respect to each such Document:

- a. the type of privilege claimed;
- b. the type of Document;
- c. the general subject matter of the Document;
- d. the date of the Document;
- e. such other information as is sufficient to identify the Document for a subpoena *duces tecum*, including, where appropriate, the name and title of the author of the document, the name and title of any recipient, and identification of anyone providing legal counsel;
- f. the Request(s) to which the Document is responsive; and
- g. any other information required to be furnished by Fed. R. Civ. P. 26(b)(5).

Provide the information requested in this instruction in a searchable and sortable electronic format and with sufficient specificity to enable the undersigned counsel and the Court to assess the applicability of the claimed privilege or protection.

4. These Requests shall be deemed continuing in nature so as to require production of all additional or different Documents or information responsive to these Requests, which You discover, receive, or generate between the time of the original production and trial.

5. All Documents and/or other data which relate to the subject matter of this case or these requests must be preserved. Any destruction involving such Documents or data must cease,

even if it is Your normal or routine course of business to delete or destroy such Documents or data and even if You believe such Documents or data are privileged or otherwise need not be produced.

6. Documents shall be produced in the manner described in the attached Appendix Regarding Form of Production.

7. Unless otherwise stated, the relevant time period for all requests are for Documents created or originating on or after January 1, 2015.

REQUESTS FOR DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Documents sufficient to show Donald J. Trump's or Trump Trust's current, historic, and future Financial Interest in the Trump International Hotel Washington, D.C. ("Trump International Hotel").

REQUEST FOR PRODUCTION NO. 2:

All of Your state and federal income tax returns, including all schedules, attachments, and other forms or supporting documentation completed or submitted with the tax returns.

REQUEST FOR PRODUCTION NO. 3:

Documents sufficient to establish Your organizational chart from January 1, 2015 to the present, including Documents identifying the names of the individuals holding the positions referenced on any organizational charts, and including any changes made since January 1, 2015.

REQUEST FOR PRODUCTION NO. 4:

All Documents Concerning the Emoluments Clauses and Emoluments Litigation.

REQUEST FOR PRODUCTION NO. 5:

All Documents and Communications Concerning draft and final versions of any Agreements between the United States of America, acting by and through the Administrator of General Services Administration and Trump Old Post Office LLC, or between the United States

and the Trump International Hotel, including any lease Agreements and amendments, codicils, exhibits, or appendices thereto, including the January 20, 2017 amendment.

REQUEST FOR PRODUCTION NO. 6:

All Documents Concerning Communications with the GSA regarding the Trump International Hotel or Old Post Office LLC.

REQUEST FOR PRODUCTION NO. 7:

All Documents, including Communications, Concerning the Trump International Hotel's or Old Post Office LLC's lease with the United States.

REQUEST FOR PRODUCTION NO. 8:

Documents sufficient to show Donald J. Trump's or Trump Trust's current, historical, and future Financial Interest in BLT Prime by David Burke Washington, D.C. ("BLT Prime").

REQUEST FOR PRODUCTION NO. 9:

All Documents Concerning any Agreement between BLT Prime and Donald J. Trump, Trump Trust, the Donald J. Trump Revocable Trust, or any Businesses in which President Donald J. Trump possessed a Financial Interest at the time the Agreement was executed, including any licensing or operating Agreements for BLT Prime.

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to Identify all Businesses doing business in the Washington D.C. metropolitan area in which Donald J. Trump or Trump Trust has a Financial Interest, where Identify means to disclose (i) the name, place of incorporation, and headquarters address of each Business; (ii) the name of each Business owner and each ownership interest by value and percentage; and (iii) each Business's articles of incorporation, operating Agreements, and management Agreements.

REQUEST FOR PRODUCTION NO. 11:

All Documents Concerning Your policies or practices with respect to the storage, location, retention, preservation, destruction, disposal, or identification of Documents responsive to these Requests, and if such policies or practices have changed over time, Documents sufficient to identify each such change.

REQUEST FOR PRODUCTION NO. 12:

All Documents Concerning litigation holds issued as a result of the Emoluments Litigation, including any litigation holds issued in response to a Document preservation subpoena.

REQUEST FOR PRODUCTION NO. 13:

Documents sufficient to identify the payor and/or source of the Payment in the amount of \$151,470 from The Trump Corporation to the U.S. Treasury dated February 21, 2018, as well as any other Payments made to the U.S. Treasury that purport to reflect profits and/or revenues received by Donald J. Trump from Foreign or Domestic Governments or purport to reflect profits and/or revenues received by a Business in which Donald J. Trump has a Financial Interest from Foreign or Domestic Governments.

REQUEST FOR PRODUCTION NO. 14:

All Documents Concerning the determination or calculation of the amount of the Payment to the U.S. Treasury dated February 21, 2018, and the amount of each other Payment made to the U.S. Treasury that purports to reflect profits and/or revenues received by Donald J. Trump from Foreign or Domestic Governments or purports to reflect profits and/or revenues received by a Business in which Donald J. Trump has a Financial Interest from Foreign or Domestic Governments, including all documents reviewed, consulted, or created in determining or calculating such amount.

REQUEST FOR PRODUCTION NO. 15:

All Communications regarding the Payment of \$151,470 to the U.S. Treasury dated February 21, 2018, as well as any other Payments made to the U.S. Treasury that purport to reflect profits and/or revenues received by Donald J. Trump from Foreign or Domestic Governments or purport to reflect profits and/or revenues received by a Business in which Donald J. Trump has a Financial Interest from Foreign or Domestic Governments.

Date: December 4, 2018



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APPENDIX TO DOCUMENT REQUESTS REGARDING FORM OF PRODUCTION

A. Hard Copy Paper Documents

1. All hard copy paper documents should be produced as TIFF image files (black-and-white) and as JPEG image files (color) in electronic form. Each filename must be unique and match the Bates number of the page. The filename should not contain any blank spaces and should be zero padded (for example ABC0000001).
2. Each delivery should be accompanied by an image cross reference file that contains document breaks.
3. A delimited text file that contains available fielded data should also be included, at a minimum including Beginning Bates Number, Ending Bates Number, Custodian and Number of pages, as well as link to OCR text if any (see below). The following delimiters should be used:
 - a. Field Separator (ASCII:0020)
 - b. Quote (ASCII:0254)
 - c. Multi-Entry Delimiter (ASCII:0059)
 - d. <Return> Value in Data (ASCII:0174)
4. To the extent that documents have been run through an Optical Character Recognition (OCR) software in the course of reviewing the documents for production, full text should also be delivered for each document. Text should be delivered on a document level in an appropriately formatted text file (.txt) that is named to match the first bates number of the document.
5. A text cross reference load file should also be included with the production delivery that lists the beginning Bates number of the document and the relative path of the text file for that document on the production media.
6. The TIFF images should be produced as single-page Group IV TIFF format at 300 dpi with an Opticon image load file. The Opticon image load file should contain the BEGBATES value for each corresponding document and appropriate path or folder information to the corresponding images that comprise each document. Each TIFF or JPEG image should be individually Bates numbered. The Bates number must not obliterate, conceal, or interfere with any information on the produced document.
7. Every TIFF file in each production must be referenced in the production's corresponding load file. The total number of TIFF files referenced in a production's load file should match the number of TIFF files in the production.

B. All Electronic Documents

1. All electronic documents should be produced in such fashion as to identify the location (i.e. the network file folder, hard drive, backup-tape or other location) where the documents are stored and, where applicable, the natural person in whose possession they were found (or on whose hardware device they reside or are stored). If the storage location was a file share or work group folder, that should be specified as well.
2. Attachments, enclosures, and/or exhibits to any parent documents should also be produced and proximately linked to the respective parent documents containing the attachments, enclosures and/or exhibits.
3. For all documents originating in electronic form, documents should be produced as native format and in the order that they were stored in the ordinary course of business, i.e. emails that attach documents or spreadsheets should not be separated from each other and should be linked using the Group Identifier field above. The file name should match the bates number assigned to the file.
4. For Documents that are produced from electronic format, the full extracted text will be provided by a link in the main (.DAT) load file. The following extracted data and metadata fields shall to be provided in the load file:
 - a. Begbates
 - b. Endbates
 - c. Group Identifier¹
 - d. Custodian
 - e. Other Custodian (if cross-custodian de-duplication is employed)
 - f. Path (original path for edocs, inbox path for emails)
 - g. Document Type
 - h. Confidentiality Designation
 - i. Subject (for emails)
 - j. To (for emails)
 - k. From (for emails)

¹ The Group Identifier should contain the Begbates value of an attachment's parent document. The Group Identifier for a parent document is equal to the Begbates for the parent document.

- l. Cc (for emails)
 - m. Bcc (for emails)
 - n. Received Date/Time (for emails)
 - o. Sent Date/Time (for emails)
 - p. Time Offset Value (indicate which time zone the data is set to when processed)
 - q. E-mail Has Attachments (Yes/No field indicating if there are attachments to an e-mail)
 - r. E-mail Attachment Count (number of attachments to an e-mail)
 - s. Link to Extracted Text (body of email for email, extracted text of document for edocs and attachments)
 - t. File Author (for Attachments and Edocs)
 - u. File Name (for Attachments and Edocs)
 - v. File Create Date/Time (for Attachments and Edocs)
 - w. File Modify Date/Time (for Attachments and Edocs)
 - x. Page Count
 - y. MD5 Hash Value
 - z. Path to Native File
 - aa. Has Hidden Data: Yes or blank (Hidden data refers not only to Excel files with hidden columns, rows, spreadsheets, etc., but also PowerPoint files in which comments or other fields may be hidden)
5. Extracted full text (not OCR text) should be delivered for each electronic document. The extracted full text should be delivered on a document level according to the specifications above similar to paper documents.
6. Social Media and Web Content. Social media and other web content shall be produced as Group IV TIFF images with associated metadata load files. The parties will further confer regarding the specific web pages and available metadata.

C. Production of Structured Data

Databases or structured data should be produced in a mutually agreeable data exchange format. To the extent a response to discovery requires production of discoverable electronic information contained in a database, the producing party will make available a data dictionary or equivalent information identifying the specific fields included in its database and what sort of information is stored in each field, so that the parties may meet and confer regarding which data elements will be extracted for production. Ultimately, production should be in an exportable electronic file (*e.g.*, Excel or CSV format).

D. Non-Substantive Files

System and program files defined on the National Institute of Standards and Technology (“NIST”) list need not be processed, reviewed or produced.

E. Color

For files not produced in their native format, if an original document contains color, the producing party may produce black and white image(s). At the request of the receiving party, the parties shall meet and confer regarding production of color image(s) for specific documents.

F. Bates Numbering

1. Document Images. Each page of a produced Document shall have a unique page identifier (“Bates Number”) electronically “burned” onto the image at a location that does not unreasonably conceal or interfere with any information from the source document. Any confidentiality legend shall be “burned” onto each document’s image at a location that does not unreasonably obscure any information from the source document. Redacted documents will be so identified by electronically “burning” the legend “Redacted” onto each document’s image at a location that does not unreasonably obscure any information from the source document.
2. Native Format Documents. Documents produced in Native Format will be produced with a placeholder TIFF image. Each TIFF placeholder will contain the Bates number and confidentiality designation, if any.
3. Confidentiality Designations. Information designated as “CONFIDENTIAL INFORMATION” pursuant to the terms of a Protective Order entered by the Court in the Litigation, or that has been redacted in accordance with applicable law or court order, shall show the confidentiality designation both on the face of all TIFFs pertaining to such item/document, and in the appropriate data field in the load file.

When any “CONFIDENTIAL INFORMATION” is converted to a printed or imaged format for use in any submission or proceeding, the printout or page image shall bear the protective legend on each page in a clear and conspicuous manner, but not so as to obscure the content.

G. Production Media

Documents shall be produced by SFTP site or on CD-ROM, DVD, external hard drive (with standard PC compatible interface), or such other readily accessible computer or electronic media as the parties may hereafter agree upon (the “Production Media”). Each item of Production Media shall include: (1) its own unique name and a consistent naming convention; (2) text referencing that it was produced in the Litigation; and (3) the Bates range contained on such Production Media item.

H. Attachments

Email attachments and embedded files or links must be mapped to their parent by the Document or Production number. If attachments and embedded files are combined with their parent documents, “BeginDoc” and “EndDoc” fields listing the unique beginning and ending number for each document and “BeginAttach” and “EndAttach” fields listing the begin and end of the entire document family must be included.

I. Embedded Objects

Objects embedded in Microsoft Word and .RTF documents, which have been embedded with the “Display as Icon” feature, will be extracted as separate documents and treated like attachments to the document. Other objects embedded in documents shall be produced as native files.

J. Compressed Files

Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.

K. Production Problems

Documents that present imaging or format production problems shall be promptly identified and disclosed to the requesting party; the parties shall then meet and confer to attempt to resolve the problems.